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THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

Yue Heng Xu

Serial No.: 09/409,366

Filed: September 30, 1999

For: Using Two Electronic  
Programming Guides

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Art Unit: 2174

Examiner: Sy D. Luu

Atty Docket: ITL.0250US  
P7375

Assignee: Intel Corporation

Mail Stop **Appeal Brief-Patents**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST TO STRIKE SECOND EXAMINER'S ANSWER**

The Examiner has filed a second Answer which is not a reply to anything in the appellant's reply, but, instead, is an attempt to argue rejections that were not previously set forth in the Examiner's Answer. The rules provide no such opportunity for the Examiner and, as a result, the supplemental Examiner's Answer, contrary to 37 C.F.R. § 41.43, is a nullity and should be stricken. See, also, 37 C.F.R. § 41.43.

There are numerous appellate decisions that hold that the failure to argue a point is a waiver of that point. While normally these decisions apply with respect to the appellant's waiver, it is not seen how the same principle should not apply to preclude the Examiner from raising arguments that were not properly raised at the appropriate time.

In this case, the argument added that addresses the Section 112 issues focuses on the old language that was amended. Although the advisory action does not indicate that those amendments were entered, even the latest Answer indicates that the appealed claims, as set forth

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I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


  
Cynthia L. Hayden

in the Appeal Brief, are correct. Those claims include the amendments made in response to the final rejection.

Thus, the changed Answer is tardy, improper, and confusing and should be stricken. If the Examiner wishes, the Examiner can always re-open prosecution.

Respectfully submitted,

Date: August 7, 2007

  
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